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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,579	02/23/2004	Richard T. Evers	0638	9925
7590	11/04/2005		EXAMINER	
Kirk D. Houser Eckert Seamans Cherin & Mellott, LLC 44th Floor 600 Grant St. Pittsburgh, PA 15219			RAMPURIA, SATISH	
			ART UNIT	PAPER NUMBER
			2191	
			DATE MAILED: 11/04/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/785,579	EVERS, RICHARD T.
	Examiner	Art Unit
	Satish S. Rampuria	2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 February 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 23 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/23/04, 10/25/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This action is in response to the application filed on Feb 23, 2004.
2. Claims 1-20 are pending.

Information Disclosure Statement

3. An initialed and dated copy of Applicant's IDS form 1449 filed on 2/23/2004 and 10/25/2004 are attached to the instant Office action.

Oath/Declaration

4. The Office acknowledges receipt of a properly signed oath/declaration filed 2/23/2004.

Drawings

5. The drawings were received on 04/16/2002. These drawings are acceptable by the examiner.

Specification

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

7. Claims 1 and 11 objected to because of the following informalities: The abbreviation "NT" should incorporate with its full form.

The objection of the base claim is necessarily incorporated into the dependent claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the **second paragraph** of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Clarification and/or correction are required.

Regarding, claim 1, the limitation, “installer” is unclear as to it used to install the file or the files are simply gets copied where no installer is needed. In the claim language it seems that the files are only copying from one location to another.

Regarding, claim 1, the limitation, “associating data” is unclear as to what data is being associated with Primary Data Stream.

Regarding, claim 11, the limitation, “installer” is unclear as to it used to install the file or the files are simply gets copied where no installer is needed. In the claim language it seems that the files are only copying from one location to another.

The rejection of the base claims 1 and 11 is necessarily incorporated into the dependent claims 2-10 and 12-20 respectively.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is non-statutory because claim recites method for secure installation and operation of software, representing functional descriptive material without a computer readable medium or computer implemented method, method per se is not tangibly embodied. Claims 2-10 are dependent on claim 1 directly or indirectly and further support method for secure installation and operation of software without a computer readable medium or computer implemented method, method per se are not tangibly embodied thus amounts to only abstract idea and are nonstatutory.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13. Claims 1, 3-5, 8-10, 11, 12, 14-16 and 19-20 are rejected under 35 U.S.C. 102(a) as being anticipated by the document Phishing in Alternate Data Streams published by Berghel et al. (hereinafter, Berghel) published in Feb 6, 2004.

Per claim 1:

Berghel discloses:

- A method for secure installation and operation of software, said method comprising:
 - employing an NT File Structure logical volume (page 1 section Alternate Data Stream “NTFS the “primary” data stream...”);
 - employing an installer; writing a Primary Data Stream file to said NT File Structure logical volume from said installer (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)");
 - associating data with said Primary Data Stream file (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)"); and
 - writing said associated data to said NT File Structure logical volume as an Alternate Data Stream file from said installer (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)”).

Although, Berghel discloses NTFS and ADS and PDS files in Windows environment. Berghel is silent on installer. However, the feature deemed to be inherent to Berghel system. Berghel disclose ADS contains binary executables (page 4, section Phishing and Executable Streams). Berghel system would be inoperative if the installer is not present to provide ADS from PDS that includes executable file.

The limitation regarding secure installation and operation of software in the preamble is not given any patentable weight because the body of the claim does not recite any limitations related to secure installation and operation of software.

Per claim 3:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- writing, reading or manipulating said Alternate Data Stream file from an application program after said writing said associated data (page 3, “Next, we'll attach an ADS to an empty file: C:\...\test>echo "this is the first ADS associated with file1.txt"> file1.txt:first_ads.txt...” and page 9, section URL Pearls “Windows utility that is ideal for ADS manipulation is <cp.exe>”).

Per claim 4:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said Primary Data Stream file an executable file (page 4, section Phishing and Executable Streams “ADSs may contain anything... most interesting type of "anything" is the binary executable...”).

Per claim 5:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- creating a Primary Data Stream directory chain (page 2, “will create a new directory, <test>”);

- writing said Primary Data Stream directory chain to said NT File Structure logical volume from said installer (page 2, “will create a new directory, <test>”);
- writing said Primary Data Stream file to said Primary Data Stream directory chain in said NT File Structure logical volume from said installer (page 2, “since the PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in the MFT. Directories in Windows are themselves files that reference other files”);
- associating said data with said Primary Data Stream directory chain or said Primary Data Stream file by creating and closing said Alternate Data Stream file (page 2, “since the PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in the MFT. Directories in Windows are themselves files that reference other files” and page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)”, and
- installing said associated data to said NT File Structure logical volume as said Alternate Data Stream file from said installer (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)”).

Per claim 8:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- employing as said associated data first data (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream

(PDS”); employing as said Alternate Data Stream file a first Alternate Data Stream file; employing second data (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS”);

- associating said second data with said Primary Data Stream file (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS”); and
- writing said associated second data to said NT File Structure logical volume as a second Alternate Data Stream file from said installer (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS”).

Per claim 9:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- displaying said associated data from said Alternate Data Stream file in said NT File Structure logical volume (Figure 1 and related discussion).

Per claim 10:

The rejection of claim 1 is incorporated, and further, Berghel discloses:

- defining in said installation file a Primary Data Stream directory chain, said Primary Data Stream file, said Alternate Data Stream file, and at least one information file (page 4, section Phishing and Executable Streams “ADSs may

contain anything... most interesting type of "anything" is the binary executable...");

- displaying said at least one information file from said installation file (page 3, Figure 1 and related discussion);
- creating said Primary Data Stream directory chain in said NT File Structure logical volume (page 2, "will create a new directory, <test>");
- copying said Primary Data Stream file from said installation file to said Primary Data Stream directory chain in said NT File Structure logical volume (page 2, "since the PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in the MFT. Directories in Windows are themselves files that reference other files"); and
- copying said Alternate Data Stream file from said installation file to said Primary Data Stream directory chain in said NT File Structure logical volume (page 3, "Next, we'll attach an ADS to an empty file: C:\...\test>echo "this is the first ADS associated with file1.txt"> file1.txt:first_ads.txt..." and page 9, section URL Pearls "Windows utility that is ideal for ADS manipulation is <cp.exe>").

Although, Berghel discloses NTFS and ADS and PDS files in Winodows environment. Berghel is silent on installer. However, the feature deemed to be inherent to Berghel system. Berghel disclose ADS contains binary executables (page 4, section Phishing and Executable Streams). Berghel system would in inoperative if the installer is not present to provide ADS from PDS that includes executable file.

Claims 11, 12, 14-16 and 19-20 are the system claim corresponding to method claims 1, 3-5, 9 and 10 respectively, and rejected under the same rational set forth in connection with the rejection of claims 1, 3-5, 9 and 10 respectively, above.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 6, 7, 13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berghel US in view of US Patent No. 6,744,450 to Zimniewicz et al. (hereinafter, Zimniewicz).

Per claim 2:

The rejection of claim 1 is incorporated, and further, Berghel does not explicitly disclose selecting said data from the group comprising an installation log, an application configuration file, an error log, help information, and database information.

However, Zimniewicz discloses in an analogous computer system selecting said data from the group comprising an installation log (col. 8, lines 45-47 “error log indicating why the install cannot proceed”), an application configuration file (col. 7, lines 30-33 “install... pre-configured by the suite owner”), an error log (col. 8, lines 45-46 “...written out to the error log...”), help information (col. 6, lines 41-42 “...a setup database file...”; the database file is could be a help file as well since computer stores the

help file into a database, emphasis added), and database information (col. 6, lines 41-42

“...a setup database file...”).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of selecting data from the various sources as taught by Zimniewicz into the method of installation of ADS PDS files as taught by Berghel. The modification would be obvious because one of ordinary skill in the art would be motivated to have various types of files to provide the user a logical and easy to understand way that allow them to clearly see the state of the components affected, and what actions will be performed as suggested by Zimniewicz (col. 3, lines 5-22).

Per claims 6 and 7:

The rejection of claim 5 is incorporated, and further, Berghel disclose:

- employing an installation file comprising said Primary Data Stream file, said Alternate Data Stream file (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)”), installation instructions, said Primary Data Stream directory chain (page 1 Alternate Data Stream “large number... alternate data stream (ADSs)... associated with... primary data stream (PDS)” and page 2, “since the PDSname field is null, <ads0.txt> is by default associated with the subdirectory name in the MFT. Directories in Windows are themselves files that reference other files”).

Berghel does not explicitly disclose End User License Agreement.

However, Zimniewicz discloses in an analogous computer system End User License Agreement (col. 8, lines 26-30 “the UI Manager 91 displays start up screens to the user during this stage, including Welcome, Name/Organization, Password, product identification (PID), and end user license agreement (EULA) screens”).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of comprising an End User License Agreement as taught by Zimniewicz into the method of installation of ADS PDS files as taught by Berghel. The modification would be obvious because one of ordinary skill in the art would be motivated to use an End User License Agreement before installation to permit the right user to install the custom installation as suggested by Zimniewicz (col. 3, lines 14-22).

Claims 13, 17 and 18 are the system claim corresponding to method claims 2, 6 and 7 respectively, and rejected under the same rational set forth in connection with the rejection of claims 2, 6 and 7 respectively, above.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is (571) 272-3732. The examiner can normally be reached on 8:30 am to 5:00 pm Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or

relating to the status of this application should be directed to the **TC 2100 Group**

receptionist: 571-272-2100

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Satish S. Rampuria
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Art Unit 2191
10/31/2005



WEI Y. ZHEN
PRIMARY EXAMINER